

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE**  
**CONDITIONAL USE PERMIT REPORT (#FCU-12-09)**  
**NORPO CORPORATION**  
**SEPTEMBER 17, 2012**

This is a report to the Flathead County Board of Adjustment regarding a request from Don Adams on behalf of the NORPO Corporation for a conditional use permit to allow for multiple principal uses on a single lot. The subject property is located within the Willow Glen zoning district and is zoned 'B-2 General Business.'

The Flathead County Board of Adjustment will hold a public hearing on the proposed conditional use on October 2<sup>nd</sup>, 2012 beginning at 6:00 P.M. in the 2<sup>nd</sup> floor conference room of the Earl Bennett Building, 1035 First Avenue West, Kalispell. Documents pertaining to this file are available for public inspection in the Flathead County Planning and Zoning Office, also located on the second floor of the Earl Bennett Building.

**I. APPLICATION REVIEW UPDATES**

**A. Land Use Advisory Committee/Council**

The proposed land use is not located within the advisory jurisdiction of a Land Use Advisory Council.

**B. Board of Adjustment**

This space is reserved for an update regarding the October 2, 2012 Flathead County Board of Adjustment review of the proposal.

**II. GENERAL INFORMATION**

**A. Application Personnel**

**i. Applicant**

Don Adams  
1192 U.S. Highway 2 East  
Kalispell, MT 59901

**ii. Landowner**

NORPO Corporation  
PO Box 130743  
Houston, TX 77219

**B. Property Location and Size**

The subject property is located east of Kalispell, on the south side of U.S. Highway 2, the address is 1192 U.S. Highway 2 East, and is approximately 0.9 acres. The property can be legally described as Tract 13F in Section 8, Township 28 North, Range 21 West, P.M.M., Flathead County, Montana (see Figure 1 below).

**Figure 1:** Subject property shaded yellow.



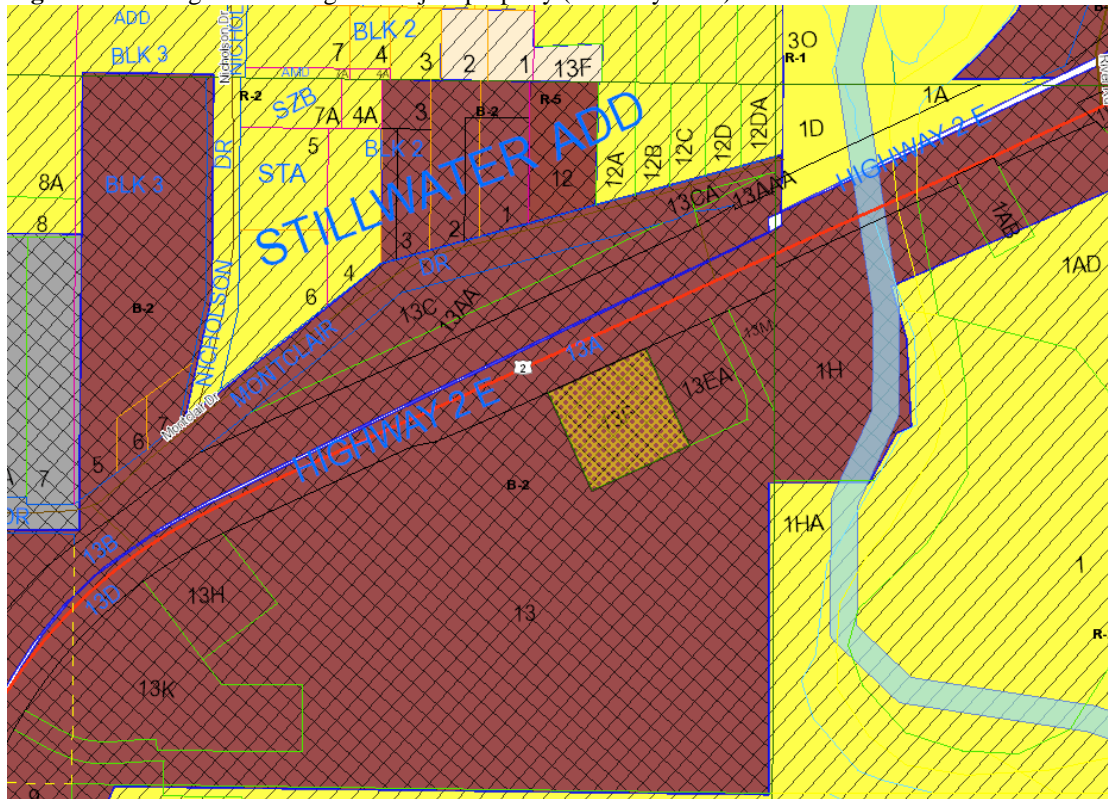
#### **C. Existing Land Use(s) and Zoning**

The property is currently developed with an existing pawn shop. The property is located within the Willow Glen zoning district and is zoned ‘B-2 General Business,’ a district intended to “provide for those retail sales and service functions and operations that are typically characterized by outdoor display, storage, and/or sale of merchandise, by major repair of motor vehicles, and by outdoor commercial amusement and recreational activities. This district should also serve the general needs of the tourist and traveler.”

#### **D. Adjacent Land Use(s) and Zoning**

Directly adjacent to U.S. Highway 2, the area surrounding the subject property is generally established with commercial business, and adjacent land to the north, south, east and west of the subject property is zoned ‘B-2 General Business.’ Currently, parcels surrounding the subject property are utilized for active and vacant general business purposes. There are a few residences located north of Highway 2 and south of the subject property, but not directly adjacent.

**Figure 2:** Zoning surrounding the subject property (shaded yellow).



#### **E. Summary of Request**

The applicant is currently operating a pawn shop on the subject property and is proposing to also sell automobiles. The request is for a conditional use permit to allow for multiple principal uses on a single lot pursuant to Section 3.03.020(3) FCZR, as the pawn shop will continue operation. The request for multiple principal uses is required due to the fact that ‘automobile (new and used) sales’ and ‘retail sales and services’ uses are not accessory to one another and constitute independent principal uses as defined in Section 7.16.080 FCZR.

The proposed automobile sales use would be outside in the northern front of the property and the pawn business will continue to take place inside the existing building. Primary access to the facility and parking area would be from existing approaches off U.S. Highway 2.

#### **F. Compliance With Public Notice Requirements**

Notification was mailed to property owners within 150 feet of the subject property on September 7, 2012, pursuant to Section 2.06.040(3) of the Flathead County Zoning Regulations. Legal notice of the public hearing on this application will be published in the September 16, 2012 edition of the Daily Interlake.

#### **G. Agency Referrals**

Referrals were sent to the following agencies on August 31, 2012:

- Flathead County Road and Bridge Department
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact County facilities.
- Flathead County Solid Waste (FCSW)
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact County facilities.
- Evergreen Fire Department
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact Evergreen Fire Department facilities.
- Evergreen Water and Sewer District
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact Evergreen Water and Sewer District facilities.
- Flathead City-County Environmental Health Department
  - Reason: The property is located within the department's jurisdiction.
- Kalispell Planning Office
  - Reason: The subject property is within the Kalispell City-County Master Plan area.
- Flathead County Sheriff's Office
  - Reason: The property is located within the department's jurisdiction, and has the potential to impact County facilities.
- Montana Department of Transportation (MDT)
  - Reason: The subject property is located along a state maintained highway.

### **III. COMMENTS RECEIVED**

#### **A. Public Comments**

No written public comments have been received to date regarding the conditional use permit request. It is anticipated any individual wishing to provide public comment on the proposal will do so during the public hearing scheduled for October 2, 2012. Any written comments received following the completion of this report will be provided to the Board and summarized during the public hearing.

#### **B. Agency Comments**

The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead City-County Health Department
  - Comment: Office had no comment regarding this proposal.
- Montana Department of Transportation
  - Comment: The property has two existing approaches to US Highway 2 which will continue to be used for access.
- City of Kalispell Planning Department
  - Comment: The Kalispell Planning Department does not have any comments at this time.
- Flathead County Road and Bridge Department
  - Comment: Office had no comments regarding this proposal.



#### IV. CRITERIA REQUIRED FOR CONSIDERATION

Per Sections 2.06.080 and 2.06.100 of the Flathead County Zoning Regulations, what follows are criteria required for consideration of a Conditional Use Permit and suggested findings of fact based on review of each criterion.

##### A. Site Suitability

###### i. Adequate usable space

The subject property is approximately 0.9 acres in size, with an existing commercial structure located at the rear of the property. The front of the lot is completely paved for access, parking and storage of automobiles for sale and on the side of the building there is a fenced-in secured area for storage. The approximately 6,600 square foot building consists of the retail shop and a four stall garage.

Based on the site plan submitted on August 31, 2012, there is existing parking on both side and in front of the building and the used car sales will take place at the front of the lot. The current structure does not meet rear and side setbacks per Section 3.17.040(5) FCZR. However, based on available property record data from the State of Montana Cadastral website the structure was built in 1976 and the Willow Glen Zoning District was adopted on July 20<sup>th</sup>, 1987 therefore the structure is a legally existing non-conforming use, per Section 2.07 FCZR. Permitted lot coverage is not applicable for a B-2 zone. Based on the submitted site plan and staff's site visit there appears to be adequate space to accommodate the proposed use on the property.

**Figure 3:** Location of existing parking area on subject property.



**Finding #1** – The subject property appears to contain adequate usable space because the lot is approximately 0.9 acres, the existing commercial building is located towards the rear of the property, and the existing 33,000 square foot paved parking lot is located at the front of the lot, allowing adequate room for parking, vehicle storage and traffic circulation.

**ii. Adequate access**

The subject property is located on the south side of U.S. Highway 2, a paved four lane highway with a raised median and maintained by the Montana Department of Transportation (MDT). There are two existing approaches providing ingress and egress and both are currently only right-in/right-out off of U.S. Highway 2. An agency referral was sent to MDT regarding the proposed use; however no comments have been received at this time. The existing approaches vary in width from 26 feet to 30 feet. Based on staff's site visit and a copy of the Montana Department of Highway's approach permit for the subject property, it appears there is adequate sight distances from the existing accesses to enter and exit the property safely. The applicant has an existing approach permit from MDT that will need to be re-reviewed because of the proposed multiple uses. It is not anticipated the proposed use would interfere with the current access.

**Finding #2** – There is adequate access for the proposed use because the subject property is located off a U.S. highway with two established approaches able to serve the anticipated use, there is adequate sight distance to safely enter and exit the property and the existing approach permit will need to be re-reviewed by MDT.

**iii. Absence of environmental constraints**

The subject property is relatively flat with no significant elevation changes. The majority of the property is covered in paving and structures with some vegetation located in the back of the building. Additionally, there are no wetlands, streams, or creeks located on the parcel. The subject property is located on FEMA FIRM panel 30029C1810G, the front of the lot is located in an un-shaded Zone X, which is classified as an area outside the 500-year floodplain and the rear of the subject property appears to be located within the Zone AE an area classified as special flood hazard area. No development will occur in the floodplain, the applicants would just be parking cars near it. It appears the proposed use will occur outside zone AE.

**Finding #3** – As proposed, the addition of automobile sales to the existing pawn shop would not have any additional impact on designated floodplain, wetland and riparian habitat because there are no new structures proposed as part of the request and the proposed use will not occur in the area designated as special flood hazard area.

## **B. Appropriateness of design**

### **i. Parking scheme**

The existing parking area is currently paved but not painted. According to the submitted application and site plan, the applicant has designated a parking area with approximately 32 spaces. Section 6.09.010 of the Flathead County Zoning Regulations requires that retail or personal service stores have 1 parking space per every 300 feet of gross floor area. The applicant has stated that the existing building has approximately 6,609 square feet of floor area; therefore the applicant would be required to provide approximately 22 parking spaces. The addition of used vehicle sales on the subject property will likely generate a need for additional parking spaces; however the Flathead County Zoning Regulations do not specifically address parking requirements for automobile sales. The site plan shows 32 parking spaces 10 more than is required for retail and personal service stores. Additionally the applicant has stated they are in the process of restriping the parking lot with new lines. The 10 additional parking spaces and areas in the front of the lot not used for ingress/egress or traffic aisles could be used for automobiles for sale. Based on the applicant's submitted site plan and staff's site visit to the subject property, there appears to be adequate space for the parking required.

**Finding #4** – The proposed designated parking area is acceptable because there is adequate room on the subject property for the parking area to meet the requirements within Section 6.09.010 FCZR, the proposed site plan shows adequate parking for the existing use with the remaining 10 spaces for the new use and the applicant has stated they will demarcate the parking area.

### **ii. Traffic circulation**

The site is accessed from U.S. Highway 2, which is a four lane paved U.S. highway with a raised center median. The property has sufficient area to facilitate safe parking and traffic circulation. The applicant has stated that enter/exit signs will be placed on the site thus marking the western access as an entrance and the eastern access as an exit. The site plan shows traffic aisles approximately 20 feet to 45 feet wide. The 20 foot traffic aisle will be for one way traffic. The proposed parking area appears large enough to accommodate the number of proposed spaces and the placement of used automobiles for sale, while affording adequate and compliant internal traffic circulation.

**Finding #5** – There appears to be adequate traffic circulation for the proposed use because the proposed traffic aisle widths meet standards set forth in Appendix A FCZR.

### **iii. Open space**

The 0.9 acre subject property and the structures located on it were in place before the Willow Glen zoning district was adopted. According to the Flathead County Zoning Regulations, the B-2 zone list permitted lot coverage as not

applicable, and the setbacks as 20 feet from the front and side corner, 5 feet for the side and 15 feet for the rear. The structure does not meet setbacks for a B-2 zone but the building was constructed in 1976, well before the Willow Glen zoning district was established in 1991. Therefore the building is considered a legal non-conforming structure. Because the building is an existing non-conforming structure and there is no applicable lot coverage for B-2 zoning the subject property meets open space requirements.

**iv. Fencing/screening**

The subject property has an 8-foot chain link fence along the side of the building for security purposes. The fencing is located in the rear, and east side of the property. The applicant has stated the fence height is 8 feet because the business located to the rear of the subject property is not operating and is a potential security risk. The fencing is compliant with the B-2 zoning because security fences are allowed in side and rear yards up to eight (8) feet in height when used to enclose commercial storage areas, per Section 5.04.040 FCZR. No additional fencing or screening has been proposed by the applicant as part of this conditional use permit.

**v. Landscaping**

No landscaping has been proposed by the applicant as part of this conditional use permit. The area surrounding the subject property is currently zoned B-2 therefore there are no landscaping requirements.

**Finding #6** – Existing open space, fencing, and landscaping on the subject property appear adequate for the proposed use because although the structure is non compliant in regard to the setbacks the structure is legally non-conforming and has operated effectively for retail purposes, the fence height is restricted to eight (8) feet for security fences, and there are no requirements for landscaping.

**vi. Signage**

The property currently has one freestanding sign at the front of the property and three wall signs located on the building. The applicant has stated the freestanding sign is approximately 22 feet high with a surface area of approximately 56 square feet on each side and the sign is located 32 feet from the right-of-way. According to Table 1 in Section 5.11.020(3)(E) the maximum size allowed per face for 31-40 feet setback from the right-of-way is 108 square feet.

The total maximum sign area is based on building frontage (lineal feet) [Section 5.11.020(11)(A) FCZR]. Based on the site plan submitted by the applicant the building frontage is 115 lineal feet, allowing for a maximum of 172.5 square feet of total signage. The application states that two wall signs located on the building total 112 square feet and did not give dimension for the third sign. The third wall mounted sign is an old sign located on the building from a previous business located at the site. The 112 square feet of the two wall signs added to



the 56 square feet of the free standing sign puts the total sign square footage for the property is 168 square feet, with the third wall sign included the subject property would be over the total maximum square footage allowed for signs. The applicant has stated that the additional sign will be removed; therefore it appears the proposal would comply with provisions for the maximum allowable signage with the removal of the old signs. No additional signage has been proposed by the applicant as part of this conditional use permit.

**Figure 4:** Existing free standing sign on subject property.



**Finding #7** – Existing signage for the property is not currently in compliance with applicable regulations because the existing freestanding sign complies with the freestanding signage regulations found in Sections 5.11.020(3) and 5.11.040(4) FCZR, but the existing walls signs do not comply with Section 5.11.020(8) FCZR and the total sign area does not comply with Section 5.11.020 (11) FCZR, however, a condition to remove excess signage would mitigate the potential non-compliance.

#### **vii. Lighting**

The subject property has existing lighting located on the front of the building and is not proposing any additional lighting. Staff has determined based on a site visit that the existing lighting angled towards the ground, located under the roof overhang appears to shield the light source. If the applicant wishes to add additional lighting on the property in the future, it must comply with performance standards set forth in FCZR Section 5.12.

**Finding #8** – There will be limited visual impacts resulting from lighting because existing lighting appears to be shielded and additional lighting would

be required to comply with applicable requirements set forth in the Flathead County Zoning Regulations.

### **C. Availability of Public Services and Facilities**

#### **i. Sewer**

The subject property is currently developed and served by the Evergreen Water and Sewer District for sewer services. The proposed automobile sales will occur on the lot in front of the building and limited additional demand will likely not impact the existing system.

#### **ii. Water**

The subject property is currently developed and served by the Evergreen Water and Sewer District for sewer services. The proposed automobile sales will occur on the lot in front of the building and limited additional demand will likely not impact the existing system.

#### **iii. Storm Water Drainage**

Increased stormwater runoff as a result of the multiple principal uses is not anticipated as no new construction of impermeable surfaces is proposed. After discussions with Flathead City-County Environmental Health Department it was determined that because the applicant is not proposing adding to the existing parking area and no new construction will occur thereby reducing the permeable surface area on the subject property there are no additional requirements for storm water drainage.

#### **iv. Fire Protection**

The subject property is currently served by the Evergreen Fire Department, and is located approximately 1.5 miles south of the existing fire station. Due to the centralized location of the property east of the Kalispell area, it is anticipated response times in the event of an emergency would not be unreasonably long

#### **v. Police Protection**

The property would be served by the Flathead County Sheriff's Department. Quick response times are possible given the property's proximity to an urban, developed area of the County.

#### **vi. Streets**

The subject property is accessed from U.S. Highway 2, a paved four lane highway with a raised median. U.S. Highway 2 is maintained by the Montana Department of Transportation. No comment has been received from MDT at this time.

**Finding #9** – The proposed use appears to have acceptable impacts on public services and facilities because sewer and water services will continue to be

provided by Evergreen Water and Sewer District, there are no additional requirements for storm drainage, the Evergreen Fire Department and Flathead County Sheriff provide services to the subject property within an acceptable response time and the property is accessed by U.S. Highway 2, a paved U.S. highway.

#### **D. Immediate Neighborhood Impact**

##### **i. Excessive traffic generation**

The subject property is located off U.S. Highway 2, which receives high rates of regular daily traffic. The Montana Department of Transportation (MDT) gives an estimated Annual Average Daily Traffic (AADT) count for 'U.S. Highway 2, west of the Stillwater River Bridge in 2011' as 26,000 vehicles. [Source: Traffic Data Collection and Analysis Department, MDT] The applicant has stated that the existing pawn shop generates 30 costumers or 60 vehicle trips per day. According to Institute of Transportation Engineers Trip Generation new car sales on weekday is estimated to generate 317 average daily trips, however given the character of the county it appears unlikely that the proposed use will generate that much daily traffic. If the addition of used car sales does generate 317 average daily trips that would only comprise of 1.2% of the total average daily trips on U.S. Highway 2 and therefore it is not anticipated any additional vehicle traffic generated will adversely impact the surrounding neighborhood or U.S. Highway 2.

**Finding #10** – Additional vehicle traffic associated with the proposed use is not anticipated to generate excessive traffic which would adversely impact the immediate neighborhood or U.S. Highway 2 because the highway already receives a very high number of regular daily traffic.

##### **ii. Noise or vibration**

The automobile sales is expected to increase the traffic generated, however the added customers is not anticipated to increase noise for the surrounding neighborhood. All pawn shop activity will continue to take place inside the existing building, while the automobile sales will occur on the lot in front of the existing building. Automobile sales will produce minimal audible noise and vibration and it is not anticipated that the noise will have any impact on the surrounding neighborhood given the nature of the use.

##### **iii. Dust, glare or heat**

U.S. Highway 2 and the existing parking and access area is currently paved, and therefore the proposed use will not generate substantial dust. It is not anticipated that the proposed use would create inappropriate heat, lighting will be downward pointed and compliant with applicable regulations and exterior signage is existing and does not include neon lighting. The automobile sales may create minimal glare from the windshields of vehicles for sale, however across the highway is an existing car dealership and a large parking lot is

located directly behind the subject property so it appears that any glare created will not be out of character with the neighborhood.

**iv. Smoke, fumes, gas, or odors**

No smoke, fumes, gas or other odors are anticipated to be generated by the proposed use other than those typical of a commercial business.

**Finding #11** – The proposed use is anticipated to have minimal immediate neighborhood impacts because automobile sales will not produce excessive noise, vibration, dust, glare, heat, smoke, fumes, gas or odors that are out of character of the existing neighborhood.

**v. Inappropriate hours of operation**

The applicant has stated that the current business hours are from 10:00 AM to 6:00 PM Monday through Saturday. The application indicates that the business hours may be extended to Sundays in the future. There are no specific standards for hours of operation for a B-2 zone established in the Flathead County Zoning Regulations. Additionally, there are no residential structures located in the immediate vicinity of the subject property which may be impacted by any late or weekend hours.

**Finding #12** – The proposed hours of operation are acceptable because there are no specific standards outlined for B-2 zones within the zoning regulations and there are no land uses located adjacent to the subject property which may be negatively impacted.

**V. SUMMARY OF FINDINGS**

**Finding #1** – The subject property appears to contain adequate usable space because the lot is approximately 0.9 acres, the existing commercial building is located towards the rear of the property, and the existing 33,000 square foot paved parking lot is located at the front of the lot, allowing adequate room for parking, vehicle storage and traffic circulation.

**Finding #2** – There is adequate access for the proposed use because the subject property is located off a U.S. highway with two established approaches able to serve the anticipated use, there is adequate sight distance to safely enter and exit the property and the existing approach permit will need to be re-reviewed by MDT.

**Finding #3** – As proposed, the addition of automobile sales to the existing pawn shop would not have any additional impact on designated floodplain, wetland and riparian habitat because there are no new structures proposed as part of the request and the proposed use will not occur in the area designated as special flood hazard area.

**Finding #4** – The proposed designated parking area is acceptable because there is adequate room on the subject property for the parking area to meet the requirements within Section 6.09.010 FCZR, the proposed site plan shows adequate parking for the

existing use with the remaining 10 spaces for the new use and the applicant has stated they will demarcate the parking area.

**Finding #5** – There appears to be adequate traffic circulation for the proposed use because the proposed traffic aisle widths meet standards set forth in Appendix A FCZR.

**Finding #6** – Existing open space, fencing, and landscaping on the subject property appear adequate for the proposed use because although the structure is non compliant in regard to the setbacks the structure is legally non-conforming and has operated effectively for retail purposes, the fence height is restricted to eight (8) feet for security fences, and there are no requirements for landscaping.

**Finding #7** – Existing signage for the property is not currently in compliance with applicable regulations because the existing freestanding sign complies with the freestanding signage regulations found in Sections 5.11.020(3) and 5.11.040(4) FCZR, but the existing walls signs do not comply with Section 5.11.020(8) FCZR and the total sign area does not comply with Section 5.11.020 (11) FCZR, however, a condition to remove excess signage would mitigate the potential non-compliance.

**Finding #8** – There will be limited visual impacts resulting from lighting because existing lighting appears to be shielded and additional lighting would be required to comply with applicable requirements set forth in the Flathead County Zoning Regulations.

**Finding #9** – The proposed use appears to have acceptable impacts on public services and facilities because sewer and water services will continue to be provided by Evergreen Water and Sewer District, there are no additional requirements for storm drainage, the Evergreen Fire Department and Flathead County Sheriff provide services to the subject property within an acceptable response time and the property is accessed by U.S. Highway 2, a paved U.S. highway.

**Finding #10** – Additional vehicle traffic associated with the proposed use is not anticipated to generate excessive traffic which would adversely impact the immediate neighborhood or U.S. Highway 2 because the highway already receives a very high number of regular daily traffic.

**Finding #11** – The proposed use is anticipated to have minimal immediate neighborhood impacts because automobile sales will not produce excessive noise, vibration, dust, glare, heat, smoke, fumes, gas or odors that is out of character of the existing neighborhood.

**Finding #12** – The proposed hours of operation are acceptable because there are no specific standards outlined for B-2 zones within the zoning regulations and there are no land uses located adjacent to the subject property which may be negatively impacted.

## **VI. CONCLUSION**

Upon review of this application, the request to allow for a multiple principal uses on a single lot to allow automobile sales in addition to the existing retail sales on the subject property is generally supported by the review criteria and the 12 Findings of Fact listed above. Should the Flathead County Board of Adjustment choose to adopt staff report FCU-12-09 as Findings of Fact and approve the conditional use permit, the following 9 conditions would ensure compliance with the review criteria and appropriate measures to mitigate impacts:

## **VII. CONDITIONS**

1. Operation of the automobile sales and pawn shop on the subject property shall be in substantial conformance with the application materials and site plan as submitted and approved by the Board of Adjustment and modified by the conditions below [FCZR Section 2.06.010].
2. Changes or modifications to the approved use or the site plan shall not be affected unless specifically approved in writing by the Flathead County Board of Adjustment [FCZR Section(s) 2.06.010 and 2.06.020].
3. The approved use shall conform to the applicable standards of the B-2 Community Business zoning district [FCZR Section 3.17].
4. A minimum of 22 standard vehicle parking spaces attributable to the existing use and all other spaces for the used cars sales shall be clearly established and demarcated on the subject property, pinned down curb-stops and not within adjacent highway right-of-way to accommodate customer and employee parking, in accordance with applicable zoning regulations [FCZR Sections 6.01.010, 6.01.030, Appendix A].
5. The proposed use shall be re-reviewed by the Montana Department of Transportation in order to obtain an updated approach permit applicable to multiple principal uses. A copy of the approved permit shall be available upon request by Flathead County Planning and Zoning.
6. All signage on the subject property shall comply with all applicable standards and guidelines set forth under Section 5.11 of the Flathead County Zoning Regulations, and the excess old sign shall be removed.
7. All lighting on the subject property shall adhere to the performance standards set forth in Section 5.12 of the Flathead County Zoning Regulations.
8. The operation of automobile sales and pawn shop shall commence within one year from the date of issuance of the permit. The permit may be extended for one additional year if the permittee requests additional time prior to expiration date [FZR Section 2.06.060].
9. At the end of twelve (12) months from the date of authorization of this permit staff will inspect to verify compliance [FZCR Section 2.06.060].



Planner: EKM